

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

ANDY HOPE WILLIAMS JR., SUI
JURIS IN PROPRIA PERSONA; AND
AMY CAGE, SUI JURIS IN PROPRIA
PERSONA;

Plaintiffs,

v.

EDDY LANGE, IN HIS/HER
OFFICIAL CAPACITY; KENYON
MCKINNEY, IN HIS/HER OFFICIAL
CAPACITY; MR. FNU
MONTGOMERY, IN HIS/HER
OFFICIAL CAPACITY; JOSE
GARCIA RUBIO, IN HIS/HER
OFFICIAL CAPACITY; MR. FNU
MOORE, IN HIS/HER OFFICIAL
CAPACITY; MR. FNU CLEAN, IN
HIS/HER OFFICIAL CAPACITY; MR.
FNU SHEPHERD, IN HIS/HER
OFFICIAL CAPACITY; MR. FNU
BLACKWOOD, IN HIS/HER
OFFICIAL CAPACITY; MS. FNU
HEAL, IN HIS/HER OFFICIAL
CAPACITY; MS. FNU LITTLE, IN
HIS/HER OFFICIAL CAPACITY;
AND BELL COUNTY SHERIFF'S
DEPARTMENT,

Defendants.

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W-21-CV-00895-ADA-DTG

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE ALAN D ALBRIGHT,
UNITED STATES DISTRICT JUDGE**

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b), and Rules 1(f) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is Defendant Kenyon

McKinney's Motion to Dismiss Pursuant to Rules 12(b)(5), 12(b)(1), and 12(b)(6) (ECF No. 9).

For the following reasons, the Court **RECOMMENDS** that Defendant's Motion be **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiffs filed this lawsuit on August 27, 2021. ECF No. 1. On October 26, 2021, Defendant Kenyon McKinney filed a Motion to Dismiss. ECF No. 9. Plaintiffs did not file a response in opposition to the Motion to Dismiss. On September 27, 2022, the Court indicated that it would recommend that the Motion to Dismiss be granted unless Plaintiffs filed a response within two weeks. ECF No. 11. Plaintiffs did not file a response.

II. DISCUSSION

Local Rule CV-7 provides that “[i]f there is no response filed within the time period prescribed by this rule, the court may grant the motion as unopposed.” Plaintiffs failed to file a response within 14 days as required, and further failed to file a response when given an additional 14 days of notice of this Court’s intent to recommend that the Motion to Dismiss be granted. Therefore, the Court will treat Defendant’s Motion to Dismiss as unopposed, and recommends that the Motion to Dismiss be granted.

III. RECOMMENDATION

For the above reasons, it is the **RECOMMENDATION** of the United States Magistrate Judge to the United States District Judge that Defendant’s Motion to Dismiss (ECF No. 9) be **GRANTED**.

IV. OBJECTIONS

The parties may wish to file objections to this Report and Recommendation. Parties filing objections must specifically identify those findings or recommendations to which they object.

The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). Except upon grounds of plain error, failing to object shall further bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas*, 474 U.S. at 150–53; *Douglass*, 79 F.3d at 1415.

SIGNED this 14th day of October, 2022.



DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE